(3)



No. 87-1981

IN THE

# Supreme Court of the United States

October Term, 1988

CECIL G. HARRIS,
*Petitioner,*

vs.

REFINERS TRANSPORT & TERMINAL CORPORATION
and
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS UNION, LOCAL NO. 20
and
WILLIAM LICHTENWALD,
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## RESPONDENT UNION'S BRIEF IN OPPOSITION

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## RESTATEMENT OF THE QUESTIONS PRESENTED

I. Whether Summary Judgment is properly granted where, in an action brought pursuant to Section 301 of the Labor Management Relations Act by a discharged employee, the employee fails to oppose motions for summary judgment filed by the employer and the union?

II. Whether a Motion to amend a judgment and/or a Motion for leave to file an amended complaint must be granted after unopposed motions for summary judgment have been granted?

III. Whether there is a right to a jury trial in an action brought pursuant to Section 301 of the Labor-Management Relations Act?

## LIST OF PARTIES

The parties to the proceedings below were Petitioner Cecil G. Harris and Respondents Refiners Transport & Terminal Corp.; Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 20 and William Lichtenwald.

The Respondents before this Court include Refiners Transport & Terminal Corp. and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 20.

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases

**Statutes and Rules**



**Text**

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## OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit has not been reported. It is substantially reprinted at p. 1 of the Appendix to the petition.

The opinion and orders of the United States District Court for the Northern District of Ohio (Walinski, *D.J.*), have not been reported. They are substantially reprinted at p. 13 of the Appendix to the petition.

## JURISDICTION

The Respondent Union does not contest the statement of jurisdictional grounds set forth in the Petition of Writ of Certiorari.

## STATUTORY PROVISIONS INVOLVED

The Respondent Union does not contest the Petitioner's statement of relevant statutory provisions set forth in the Petition for a Writ of Certiorari.

## COUNTERSTATEMENT OF THE CASE

The Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 20 (hereinafter referred to as the "Union") adopts by reference the facts as stated by the United States Court of Appeals for the Sixth Circuit in its Opinion of December 22, 1987. *See*, Petition Appendix at p. 1. The pertinent facts can be simply stated. Refiners Transport and Terminal Corporation (hereinafter referred to as the "Company") is in the business of transporting liquid chemicals. The Company's employees are represented for the purposes of collective bargaining by the Union. The Company and the Union are, and have been at all relevant times, signatory to a collective bargaining agreement. *See*, Petition Appendix at p. 3. Petitioner, Cecil Harris, was discharged by the Company from his truck driver's job because the Company found that Harris had accumulated numerous violations of Company rules on his work record. *See*, Petition Appendix at p. 3, 4.

On January 5, 1984, pursuant to the collective bargaining agreement between the Company and the Union, the Company held a pre-discharge meeting with petitioner and a Union representative. At that meeting, the Company reviewed petitioner's work record and indicated that he had violated Company rules twelve (12) times during the preceding nine (9) months. Thus, the Company claimed that the discharge of petitioner was justified and did not violate its collective bargaining agreement with the Union.

Subsequently, petitioner filed a written grievance protesting the discharge. After the Company and the Union were unable to agree upon a resolution to the grievance, the Union referred petitioner's grievance to

the Ohio Joint State Grievance Committee[1] (hereinafter referred to as the "Committee") pursuant to the collective bargaining agreement. *See,* Petition Appendix at p. 4.

A hearing before the Committee on petitioner's grievance was held on January 10, 1984. Both the Company and the Union were represented at the hearing. The Company read the discharge letter sent to petitioner dated January 9, 1984. Then the Company reviewed petitioner's work record and the events leading up to the decision to discharge petitioner. The Company argued that based on these factors the Company's discharge of petitioner should be sustained. *See,* Petition Appendix at p. 4.

William Lichtenwald, the Union's business agent, then presented petitioner's case before the Committee. The Union stated that petitioner with the aid of the Union, had sent a letter of protest after each action taken by the Company regarding petitioner. Further, the Union presented petitioner's response to each matter raised by the Company. *See,* Petition Appendix at p. 4. After William Lichtenwald completed his presentation, petitioner was given an opportunity to speak on his own behalf and did so. *See,* Petition Appendix at p. 4. The Committee deliberated on the facts presented and issued a majority decision sustaining the Company's discharge of petitioner. *See,* Petition Appendix at p. 4-5.

Petitioner then brought this action in the United States District Court for the Northern District of Ohio, Western Division, pursuant to Section 301 of the Labor

[1] The collective bargaining agreement provides a procedure by which, in the event the Company and the Union are unable to resolve a grievance, the grievance is forwarded to the Ohio State Joint Grievance Committee. The Committee is composed of individuals representing various companies and union locals who are signatory to the collective bargaining agreement. In the event that a decision is rendered by a majority of the Committee members, such decision is final and binding on the parties.

Management Relations Act (hereinafter referred to as the "LMRA"), 29 U.S.C. Section 185, and, Section 101 of the Labor Management Reporting and Disclosure Act (hereinafter referred to as the "LMRDA"), 29 U.S.C. Section 411 on July 6, 1984. Thereafter, the Company filed a Motion for Summary Judgment on June 7, 1985. Petitioner failed to respond to the Motion, which was granted on March 31, 1986, and Judgment was entered against him. *See,* Petition Appendix at p. 6.

On April 11, 1986, petitioner filed a Motion for a new trial and a motion to alter and amend judgment pursuant to the "inherent power of this Court to reconsider and vacate." Further, on April 30, 1986, petitioner filed a motion for leave to amend his complaint and again moved the district court to vacate the judgment of March 31, 1986, pursuant to Federal Rule of Civil Procedure 60(b). The Union and the Company opposed each motion. *See,* Petition Appendix at p. 6.

The District Court ruled that a motion for a new trial subsequent to summary judgment was technically improper and thus found it to be without merit. *See,* Petition Appendix at p. 7. It also concluded that none of petitioner's other allegations established a genuine issue of material fact, even when judged in a light most favorable to him. Accordingly, the District Court denied all of petitioner's post-judgment motions. *See,* Petition Appendix at p. 7.

Petitioner subsequently appealed the district court's grant of summary judgment to the United States Court of Appeals for the Sixth Circuit. On December 22, 1987, the Court of Appeals affirmed the District Court's grant of summary judgment. For the reasons that follow, the Petition for Writ of Certiorari must be denied and the December 22, 1987 affirmation of the United States Court of Appeals for the Sixth Circuit must stand.

## REASONS WHY THE PETITION SHOULD BE DENIED

### I. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT.

Conspicuously absent from the petition in the instant matter is any statement regarding the "special and important reasons" which would warrant the exercise of this Court's discretionary power to review upon certiorari. *See,* U.S. Sup. Ct. Rule 17. In this regard, there is no conflict among the federal courts of appeal on the issues; the instant case does not present any undecided question of federal law; and the decision of the Court of Appeals in the instant case does not conflict with any of the applicable decisions of this Court. Indeed, this Court has long maintained that a writ of certiorari does not issue except in cases of public importance, or where there exists a *real* conflict of authority between the federal courts of appeal. *See, Wayne & Bowler Corp. v. Western Well Works, Inc.,* 261 U.S. 387, 393 (1923); *Rice v. Sioux City Memorial Park Cemetery,* 349 U.S. 70, 74, 79 (1955). The petitioner attempts to bring the instant case within one of the narrow categories of cases appropriate for certiorari review by apparently arguing that the Company failed to prove that petitioner was discharged in a manner consistent with the collective bargaining agreement, that the Union failed to prove that it did not breach the duty of fair representation, and that summary judgment was therefore improperly granted.

The instant case developed through the courts below as a "hybrid" action: the petitioner brought a claim against the Company under Section 301 of the LMRA

for breach of a collective bargaining agreement and a claim against the Union for breach of the duty of fair representation. *See, United Parcel Service v. Mitchell,* 451 U.S. 56 (1981). To prevail against *either* the Company *or* the Union, petitioner was required to prove that the applicable collective bargaining agreement had been violated *and* that a breach of the duty of fair representation had occurred. *See, Hines v. Anchor Motor Freight,* 424 U.S. 554 (1976).

Furthermore, in order to demonstrate a breach of the duty of fair representation, petitioner was obligated to show that the Union's actions were arbitrary, discriminatory or taken in bad faith. *See, Vaca v. Sipes,* 386 U.S. 171 (1967). In this regard, a Union's good faith negligence or mistakes are insufficient to breach the duty, rather there must be a substantial showing of *specific facts* demonstrating fraud, deceit or dishonesty. *See, Motor Coach Employees v. Lockridge,* 403 U.S. 274 (1971); *Humphrey v. Moore,* 375 U.S. 335 (1964). Conclusory statements that union conduct is arbitrary, discriminatory or in bad faith are clearly insufficient to sustain a plaintiff's burden of proof. *See, Whitten v. Anchor Motor Freight,* 521 F.2d 1335 (6th Cir., 1975), *cert. denied,* 425 U.S. 981 (1976).

The evidentiary standards discussed above are necessarily implicated where a motion for summary judgment has been filed. Thus, "the inquiry involved in ruling on a motion for summary judgment. . .implicates the substantive evidentiary standard of proof that would apply at the trial on the merits." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 254 (1986).

In this regard, Federal courts of appeals are required to apply the same standard used by the trial court upon reviewing a grant of summary judgment. *See, Glenway*

*Industries, Inc. v. Wheelaborator-Frye, Inc.*, 686 F.2d 415 (6th Cir., 1982); *Howard v. Russell Stover Candies, Inc.*, 649 F.2d 620 (8th Cir., 1981). Upon considering whether a motion for summary judgment has been properly granted, the appellate court reviews the record and determines whether or not there is any genuine issue of material fact, and if there is not, whether or not the substantive law was correctly applied upon determining that the proponent of the motion was entitled to judgment as a matter of law. *See generally*, 6-Pt. 2, *Moore's Federal Practice*, ¶ 56.27[1] (2d ed. 1988). Indeed, this standard of review is identical to the standard contemplated by Rule 56 of the Federal Rules of Civil Procedure, which governs when and how a motion for summary judgment is to be granted. *See*, Rule 56 of the Federal Rules of Civil Procedure.

The procedure mandated by Rule 56 of the Federal Rules of Civil Procedure has been recently explained and clarified by this Court. *See, Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). In *Celotex Corp.*, this Court made clear that once a motion for summary judgment is filed, it is incumbent upon the opponent of the motion to establish the existence of an issue of material fact essential to the opponent's case. *Celotex Corp.*, 477 U.S. at 322. In the absence of such a showing, the entry of summary judgment is appropriate. *Id.* Thus, in order to defeat the motion, the non-moving party must go "beyond the pleadings and designate specific facts showing there is a genuine issue for trial." *Id.* at 324. *See also, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986).

In the instant case, the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Northern District of Ohio both

found that petitioner neither demonstrated that an issue of material fact existed nor that the substantive law did not permit the entry of judgment for respondent union. In fact, petitioner never made any attempt to respond to the Company's motion for summary judgment. Thus, the Court of Appeals agreed with the District Court's disposition of the Company's motion for summary judgment. The Court of Appeals routinely applied the law discussed above and found that the undisputed material facts available in the record revealed that the Company did not breach the collective bargaining agreement. Moreover, the Court of Appeals affirmed the District Court's determination that the undisputed facts revealed no breach of the duty of fair representation. Petitioner's conclusory and unsupported statements contained in his answers to interrogatories were insufficient to demonstrate arbitrary, discriminatory or bad faith conduct.[2] The mere existence of a scintilla of evidence in support of a plaintiff's position is insufficient to deny a properly presented motion for summary judgment. *See, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

[2] In light of the initial propriety of the District Court's grant of summary judgment, and the Court of Appeals' subsequent affirmance of the same, it is clear that there is no need to consider petitioner's stated "issues" regarding its various post-judgment motions. Likewise, it is similarly unnecessary for this Court to consider petitioner's claims regarding the right to a jury trial in hybrid action brought pursuant to Section 301 of the LMRA. In this regard, because the grant of summary judgment was proper in all respects, petitioner was not prejudiced by any lack of a jury trial. The very nature of a motion for summary judgment is to determine whether or not there are issues which are to be resolved by a jury. *See, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). In the instant case, both courts determined that there were no genuine issues remaining for resolution, either by bench or jury trial. Consequently, the issue regarding the right to a jury trial is not presented to this Court in any appropriate posture. Indeed, a review of the petition presently before this Court reveals an absolute lack of serious discussion regarding this issue.

Thus, because the grant of summary judgment below was proper, and granted in accordance with the standards enunciated by this Court and reflected in Rule 56 of the Federal Rules of Civil Procedure, none of the "special and important reasons" required by Sup. Ct. R. 17 existed here. Moreover, the decision below presents no conflict with the decisions of this Court or the decisions of any other federal Court of Appeals. Indeed, petitioner never alleges any such conflict. Therefore, this Court must refuse certiorari.

## II. IT IS INAPPROPRIATE FOR THIS COURT TO GRANT CERTIORARI IN THIS CASE, WHERE THE PETITIONER ASKS THIS COURT TO MAKE FINDINGS OF FACT.

The petition in the instant case must also be denied on the ground that petitioner improperly asks this Court to review and enter findings of facts. This Court has consistently denied certiorari when asked to review factual findings. For example, it has been stated that, "[we] do not grant certiorari to review evidence and discuss specific facts". *United States v. Johnson*, 268 U.S. 220, 227 (1925); *Texas v. Mead*, 465 U.S. 1041 (1984). Further, this Court has held that it cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error. *See, Graver Mfg. Co. v. Linde Co.*, 366 U.S. 271, 275 (1949). Thus, it is clear that certiorari should not be granted where the Court is presented primarily with a question of fact. *See, NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. 170, 176 n.8 (1981).

In the instant case, petitioner makes a long, rambling statement of the case including a detailed description of the "facts" as envisioned by petitioner. Petitioner quotes extensively from his answers to interrogatories in an attempt to bolster his claims of wrongful discharge. However, petitioner's legal arguments are given short shrift in his petition. At no place in the petition is there any consideration given to the question of whether or not the District Court and the Court of Appeals made any error, legal or otherwise. The thrust of petitioner's case is that the factual findings of the District Court and the Court of Appeals that there existed no genuine issue of fact and that respondents were entitled to judgment as a matter of law were erroneous and that this Court must now credit his version of the facts. As discussed above, such factual determinations are not the proper subject for certiorari. Clearly, petitioner's attempt to retry the facts, previously found to be clear and undisputed by two lower courts, fails to raise any special or important questions which should cause this Court to exercise its discretionary power of review. Therefore, the Court must deny the petition.

## CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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